IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.1006 OF 2007

Manohar Mahadev Shinde ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Shri P.P.Dave, adv. for the Applicant.
Shri Raja Thakare, SPP for the CID.
Smt.M.M.Deshmukh APP for the State.

CORAM: J.H.BHATIA, J.
DATE : 4th May, 2007.

P.C.:

1. Heard Mr.P.P.Dave the learned counsel for the applicant and Mr.Raja Thakare Special Public Prosecutor for the C.I.D. Perused the record.

2. At the outset it may stated that earlier bail application no.998 of 2006 filed by the present applicant was rejected by this Court on 3rd May, 2006, after going to the merits of the case. While rejecting the application, this Court had directed that trial shall be expedited and in any case it shall be decided within a period of one year by the Sessions Court. It was further observed that if the trial is not over within a period of one year, the applicant shall have liberty to apply again for bail. As the trial has not been completed in spite of expiry of one year from that

date, the applicant has moved this application. It may also be noted that meanwhile from time to time, the applicant had also moved certain applications for temporary bail and on medical ground, he was also granted bail for four weeks. His another application for bail on the principle of parity was rejected in view of the rejection of his earlier application on 3rd May, 2006. In view of the liberty granted to the applicant to move again if the trial is not completed within one year, it will be necessary to have a fresh look to the facts of the case to find out whether the applicant can now be granted bail.

3. Prosecution case, in brief, is that Smt. Asha Sadan Goel, a citizen of Canada, had been to India and was staying during the relevant night at the house of her brother Sureshchandra Agarwal. Next morning she was found in a pool of blood and on examination, the Doctor declared her dead. Some ornaments and valuable articles and cash of Rs.1,21,000/- was found to have been stolen away. The incident had taken place on 23rd August, 2003. During the investigation one Pradip Parab, an employee of Sureshchandra Agarwal, was arrested on 2nd September, 2003. After sometime, he was granted bail. He approached the Metropolitan Magistrate and made the confession statement on 27th September, 2005 wherein he

stated that conspiracy was hatched to kill Asha Goel by the applicant and others and as a result of the conspiracy she was done to death after she was stabbed. She was also assaulted on her head. Pardon was tendered to said Pradip Parab and thus, he is now an approver. On the basis of confessional statement made by Pradip Parab implicating the present applicant, the present applicant came to be arrested on 1st October, 2005 and since then he is in custody.

4. Admittedly no weapon or any incriminating article was recovered from the present applicant. According to the prosecution a liftman and a watchman had seen the present applicant going to the said flat during the relevant night . Besides such statements and the confessional statement of Pradip Parab, which were recorded almost two years after the incident, there is no other material collected by the investigating agency against the present applicant.

5. It may be noted that Dr. Sadankumar Goel, husband of the deceased, had filed Writ Petition No.1930 of 2006 seeking direction to get certain forensic investigation done from Canada, particularly about DNA Test of the clothes and materials of Pradip Parab and Pawan kumar Goenka, because the deceased was a citizen

of Canada and on the request of the family, second autopsy was conducted by the authorities in Canada. The Division Bench of this Court by the order dated 28th September, 2006 permitted the investigating agency to get the material collected in the course of investigation in Canada. As it would take sometime, the Division Bench directed that the trial Court would wait for such a report, which would be part of the medical and forensic investigation and it can be filed in the trial Court under Section 173(8) of the Cr.P.C. Even though a period of 8 months has passed after that order, investigating agency has not collected any such material from their counterpart in Canada. The learned counsel for the applicant points out that the said order was challenged before the Supreme Court by Narendra G. Goel, who is also one of the accused, and his S.L.P. has been admitted. Interim stay has been granted to the order passed by the Division Bench of this Court on 19-3-2007. In view of this, possibility of collecting material collected by the investigating agency in Canada within a short time is dim. In view of this development, trial has not commenced and Mr.Raja Thakare, the learned counsel for the State, makes a statement that extradition proceeding of Subhash Agarwal, another brother of the deceased, from Canada is yet to commence. Only a proposal has been finalised so

far. He admits that once the proposal is sent to C.B.I., it may take its own time to get approval and then orders from the Canadian authorities . In view of this development possibility of early hearing and decision of the case is bleak.

6. It is pointed out by the learned counsel for the applicant that in all 3 accused persons, including Pradip Parab, from whom the weapon of the offence and stolen articles were recovered, are granted bail. Only the present applicant against whom except the confessional statement of Pradip Parab, practically no evidence is collected, is in jail. Taking into consideration all the circumstances, I find that there is no justification to refuse the bail to the present applicant now.

7. In view of the aforesaid circumstances, applicant is granted bail in the sum of Rs.50,000/- with one or more sureties in the like amount with the condition that he shall report to D.C.B., C.I.D. Unit (2) at Sat Rasta, Bombay on every Friday at 5.00 p.m. and also on every Monday at 11.00 a.m. till the end of the trial. He shall not leave Mumbai without prior intimation to the Senior Police Inspector of the D.C.B., C.I.D. Unit (2).

8. Application stands disposed off.

(J.H.Bhatia,J.)